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Client Intake: Generally

A general description of the client intake process. This module describes aspects of client intake that pertain to all types of family law cases. Other modules provide more specific information for various types of cases.

Potential New Client Intake

Initial Contact

A potential new client (**PNC**) will contact your office in one of three ways:

1. *Directly* – The most common form of direct contact is for the PNC to call your office.
2. *Human Intermediary* – Most people have no idea how to find an attorney so they ask friends whom they think might have some experience in hiring an attorney. If that third party is a friend or business contact of yours, the friend or business contact might contact you on behalf of the PNC and ask you to contact the PNC.
3. *Digital Intermediary* – Other PNC contacts will come in through email, web site forms, social media and other impersonal means. Some attorneys encourage this by making it nearly impossible to find their phone numbers on their web sites while prominently displaying a “contact us” web form. Other times it is the PNC who would rather make indirect contact.

No matter how a PNC contacts your office, it is very important that you make direct telephone contact with the PNC on the same day as the PNC contacts your office. This is not always possible, and when it is not, you have to exercise considerable discipline in communicating with the PNC. A direct telephone call has a beginning and an end--it won't go on forever. It also allows people to hear each other's voices and feel a human connection.

Electronic communication can be impersonal and therefore inhibit the formation of a trust relationship, can be saved and fed back to you at an inopportune moment, and might continue for days. A PNC who contacts your office by email may turn that initial contact into an email exchange seeking more and more specific legal information, probably so that he or

she can continue representing him- or herself. Avoid email exchanges with PNCs.

Goals

When a PNC contacts your office, you and the PNC each have goals. The PNC may want to know a little about the law practice, the attorney he or she will meet, and the cost of handling his or her matter. You have two goals: First, obtain enough information to perform an initial screening and to support post intake research and, second, to book a meeting between the PNC and an attorney in your office.

Everything that you say in the initial PNC phone call should get you closer to booking a consultation in your office with an attorney.

Information Gathering – All PNC Calls

To facilitate a meaningful consultation, the attorney will need certain information. Some information is absolutely required and you cannot book an appointment without it. Additional information, though not required in helping you fulfill your ethical obligations, may be necessary in preparing for the consultation meeting.

Required Information

You must obtain certain information from each PNC during the initial telephone call. If you cannot gather all of this information, you may not book a consultation meeting with an attorney.

1. *Full legal name, correctly spelled.* Do not be afraid to ask how to spell a name. If you cannot understand the caller, just ask the caller to spell the name for you. You can blame the phone connection for making it

difficult for you to understand rather than imply that the caller is not speaking plainly.

2. *Date of birth.* You will need this for background checks.
3. *Opposing party's full legal name.* It is extremely important to obtain the correctly-spelled, full legal name of the opposing party. You *must* perform a conflict check on this name before the PNC meets with an attorney from your office.
4. *General nature of the case.* Simply note whether the caller is involved in a divorce with children, a custody modification, child support enforcement, needs a Will or has another legal need.
5. *Litigation county.* If this is a litigation case where an attorney will be required to make an appearance, you must find out what county and state the litigation will be in.

With this information, the attorney will be able to perform a conflict check[\[footnote\]](#), determine the PNC's account status[\[footnote\]](#), and verify that the nature of the case is within the attorney's areas of competence and that the venue is within the attorney's geographic reach.

see, Tex. R. Disciplinary Conduct 3.03

If your firm has represented the caller before, you will want to check whether that client is eligible to be engaged as per your firm's policies. Was the prior representation constructive? Did the client leave the engagement owing a significant balance?

Optional Information

1. *Usual home address.* Get the full address of where the caller normally resides. Note that the caller does not reside at work, so don't accept a business address, and the caller does not reside in a post office box, so don't accept a P.O. box or PMB (private mailbox at one of those strip mall mail shops.)
2. *Current address.* Some callers will be in temporary quarters. If they will be away from their usual home address for more than a few days, get the full street address of where they are temporarily residing.
3. *Telephone number.* Note the Caller ID (CID) indicated on your telephone but also ask the caller for his or her telephone number.

4. *Email address.* Not everyone has an email address, but try to get one. Ask the caller if he or she regularly checks this email address. Also ask the caller to think hard about whether anyone else has access to that email account. Be very careful about sending email to an address that may be monitored by an opposing party.
5. *Last 3 numbers of their driver's license and the state of issuance.* Emphasize to the caller that to protect their privacy, you only want the last 3 numbers. The caller has taken a risk in calling a stranger, so use this as an opportunity to build trust.
6. *Last 3 numbers of their Social Security number.* Again, emphasize that you only want the last 3 numbers in order to protect their privacy. If the caller asks why you are collecting these digits, let him or her know that you need the information in order to perform a conflict check and that no legal action can be taken in the State of Texas without this information.
7. *The cause number and county.* If the caller has received any paperwork regarding a lawsuit, ask him or her to read to you the cause number and county associated with the lawsuit. You will need that information to determine whether there are any pending deadlines.

Depending on the type of matter, you may have to obtain other information from the caller.

Exercises

Work the following exercises on your own. When asked to do any drafting or form development, avoid searching the Internet until you have done the very best job that you can. Thinking through the problem is what provides the benefit of doing the problem. Having a perfect answer to present in class is a much lower priority.

Exercise:

Form Development

Problem:

Develop an intake form that could be printed and provided to your assistant when a PNC contacts your law practice.

Exercise:
Ethical Considerations

Problem:

Explain the importance of collecting the opposing party's name. Your answer should contain citations to the Texas Disciplinary Rules of Professional Conduct.

Solution:

You must know the name of the opposing party so that you can determine whether the opposing party is a former client. "Without prior consent, a lawyer who personally has formerly represented a client in a matter shall not thereafter represent another person in a matter adverse to the former client." Tex. Disciplinary R. Prof. Conduct 1.09.

Exercise:
Know the Code

Problem:

In this chapter you were told to collect the last three digits of the PNC's driver's license number and Social Security number. What is the statutory basis for collecting this information?

Solution:

Section 30.014(a) of the Texas Civil Practice and Remedies Code.

Glossary

PNC

Potential New Client.

Client Intake: Child Support Enforcement

This module is meant to supplement "Client Intake: Generally" by providing specific requirements relating to the intake and screening of potential new clients involved in child support enforcement cases.

PNC Intake - Child Support Enforcement

Information Gathering – Child Support Enforcement

The unique nature of child support enforcement cases requires that a PNC provide enough information for the attorney to determine with reasonable certainty (a) the extent of any violations of the child support order, and (b) the viability of any defenses to the arrearages and contempt^[footnote].

For a partial list of defenses to the enforcement of a child support order, see section 157.008 of the Texas Family Code.

Additional Information

The PNC may or may not have access to this information at the time he or she contacts your office. If the PNC has the information, then record it on the intake form. If the PNC does not have the information, then emphasize to the PNC that it is very important that he or she bring that information to the initial consultation.

1. **CIN and PIN.** The Texas Attorney General Child Support Division maintains a website that enables an **obligee**, obligor, or attorney to login and obtain detailed, court-admissible child support payment records. To use this web site, the attorney either needs to send a letter of representation to the **OAG** or have one of the parents' CIN/PIN combination. Because there can be considerable delay to the OAG processing a letter of representation, it is easier to use the client's PNC's CIN/PIN combination.
2. *Expected Amount of Arrearage.* It's a good idea to find out how much the PNC thinks is owed in unpaid child support. The attorney will

calculate the exact amount owed, but it is helpful to be able to compare the attorney's computed figure to the PNC's expectations.

3. *Type of Support.* Court orders can contain many payment provisions that are to be treated as child support. Some of those payment provisions require that the payments be made through the **CSDU**. Payments made through the CSDU are usually limited to periodic payments of a fixed amount such as regular child support and reimbursement for medical insurance premiums. Other child support payments for which the amount would vary and for which the periodicity of the payment is irregular, such as reimbursement for the reasonable and necessary medical expenses that are incurred or paid on behalf of the child or payment for extracurricular activities, are not paid through the CSDU and therefore a court-admissible payment record will not be readily available. Dealing with arrearages on support payments that should be paid through the CSDU is simpler than dealing with arrearages on child support payments that are paid directly to the obligee and therefore the fees quoted by the attorney will be different.
4. *Whether there have been any direct payments.* Some obligors do not pay their child support through the CSDU, even if it is a type of payment that should be paid through the CSDU and even if they have been ordered to do so. The attorney will need to know whether the direct payment of child support from the obligor to the obligee is an issue. Proving a payment history, particularly in defending against a child support enforcement suit, requires more effort and expenses.

With this information, the attorney will be able to estimate the complexity of the case and be prepared to quote a fee or set the amount of an initial deposit for legal fees.

Documents for the PNC to Gather and Bring

Obligee's Documents

The obligee, who is the person who would be alleging a violation of the child support order, must supply the following documents at the initial consultation. During the intake call, the person handling the call must provide this list to the PNC.

1. *Court order(s) showing obligation that is to be enforced.* If the case comes from a county where the attorney has access to court orders through the District Clerk's web site, the attorney can obtain copies of orders even if the client cannot find them. Even on counties that provide on-line access to court orders, an order might be marked as containing sensitive information^[footnote] and thus be inaccessible. To be safe, ask the client to bring a copy of any order that is to be enforced^[footnote].

Rule 21c of the Texas Rules of Civil Procedure

Some counties, such as Harris and Dallas provide free public access to all unsealed case files. However, if the order contains sensitive data (see TRCP 21c), it will not be accessible on-line. Other counties like Collin and Tarrant provide fee-based services where subscribers can look up files for any case or, as in the case of Denton County, subscribers can only look up cases on which they are already attorney of record. Finally, there are a great number of lower-population counties that provide no ability to retrieve documents from their web site such as Rockwall and Hunt counties.

2. *Evidence of demand for payment.* This does not apply to periodic child support paid through the CSDU. This applies to reimbursement for medical expenses, extracurricular activities, etc.

Obligor's Documents

The obligor must bring in several types of documents, depending on the defenses to be raised.

1. *Court order(s) showing obligation that is to be enforced.* See discussion above.
2. *Evidence of payment.* If the obligor is raising the defense that he or she has actually made some or all of the child support payments that are

being claimed as arrearages, then the obligor needs to bring copies of all documents, including email messages and text messages, that would tend to prove that he or she actually made payments, whether through the CSDU or directly to the obligee.

3. *Detailed evidence of income and assets during the period of nonpayment.* If the obligor is raising the defense of being unable to make the payments as ordered, then he or she will need to show paystubs, W-2s and 1099s, tax returns, bank statements, and credit card statements covering the period of alleged nonpayment. The attorney will review these documents to determine whether the obligor was paying to the extent of his or her means. Also, if the obligor tried to borrow money to pay the child support, he or she needs to provide evidence of the loans or attempts to secure loans.

Exercises

Get your Texas Family Code and Texas Rules of Civil Procedure out and ready. These exercises require that you start thinking through claims and defenses.

Exercise:

Form Development

Problem:

Amend the intake form you developed in the previous module to accommodate the requirements of a child support enforcement case.

Exercise:

Form Development

Problem:

Design an addendum to your child support enforcement intake form that includes the elements of the statutory affirmative defenses to a motion for enforcement of a child support order.

Solution:

Look at section 157.008 of the Texas Family Code and create questions to address each element of each defense listed. For example, to evaluate the viability of the defense that the children were living with the obligor, you would want to ask:

- Are the children now living with obligee or obligor?
- If with obligor, then how long have the children been living with you?
- If six more than a month, Why are they living with you?
- How can you prove they have been living with you?
- Did the other parent consent to the children living with you?
- How can you prove that consent?

Exercise:

Rules of Evidence

Problem:

- A. What types of documentation might each party try to present at trial?
- B. What evidentiary objections might you make at trial?
- C. If you represent the obligor, how would you try to avoid or defeat those objections?

Solution:

- A. The obligor may show up with paper that purports to prove the payment of certain expenses. The obligee may show up with paper purporting to prove notification of medical expenses and demands for payment.
- B. Any piece of paper is subject to a hearsay objection. Any live testimony offered by a witness who did not actually see demands made or payments tendered with his or her own eyes is subject to a lack of personal knowledge objection.
- C. The rules of evidence do not apply at mediation. If you know that your obligor client is going to face insurmountable hearsay objections at trial, then move the court for mediation and bring

the otherwise inadmissible documents to mediation. If the case cannot be resolved at mediation, then obtain business records affidavits from the obligor's bank showing canceled checks or transfers to obligee. (NOTE: Bank subpoenas can be a very expensive undertaking.) If the obligee deposited checks or other instruments from obligor, demand copies of those from the obligee through discovery and rely on the self-authentication rules for admissibility. (This also shifts the financial burden of providing records to the obligee, but obligor's attorney must be willing to compel production.) Bring in live testimony from family members and friends who can truthfully testify that the obligor attempted to borrow money from them to pay the child support.

Exercise:

What Were They Thinking?

Problem:

Drawing from your own experience and common sense, write down three reasons that you think an obligor might offer to explain why he or she did not pay child support through the CSDU, even though he or she was ordered to do so.

Solution:

This author most frequently hears obligors offer the following reasons for making direct payments of child support:

- Obligor and obligee just thought it would be simpler this way. When this reason is given, it is often because, to the obligee, "simpler" meant, "I get my money faster," and to the obligor, "simpler" meant, "Now the AG won't be able to track me if I'm a few days late."
- Obligee pleads with obligor to pay directly so that obligor will get the money faster--after all there are bills to pay.
- Before the prior final order was entered, there were temporary orders. During the pendency of the matter, under the temporary

orders, obligor made direct payment and didn't think to switch to paying through the CSDU once a final order was signed.

- Obligor prefers to avoid interaction with government agencies.

Exercise:

Ethical Considerations

Problem:

Assume you represent the obligee and the obligee admits to you that he or she has received direct cash payments from the obligor. Further assume that there is no evidence of the direct payments other than the competing assertions of the parties and that the final decree provided that any informal payments from obligor to obligee are gifts in addition to child support, but not in satisfaction of child support. Are you willing to take the position at trial that there is no admissible evidence of those direct payments and, besides, the decree provides that direct payments are to be treated as gifts, not credited to child support?

Solution:

This points out that if you represent the obligor, you should take the obligee's deposition--in the presence of the obligor--and ask about direct payments. People are surprisingly unlikely to lie when the lie would create an injustice AND the person who knows the truth is sitting right in front of them. If the obligor has admitted receiving direct cash payments, you cannot let the obligor testify to the contrary. Tex. R. Disciplinary Conduct 3.03(a)(5), 3.03(b), and 3.04; *see also*, Texas Lawyer's Creed II.6, II.7, and III.15.

Glossary

AG

Attorney General. Synonymous with OAG.

CIN

Client Identification Number. A number assigned by the AG's office to uniquely identify each parent. Issued in conjunction with a PIN

CSDU

Child Support Disbursement Unit. A department within the OAG that receives, tracks, and disburses child support payments. By statute, all regular child support payments must be made through the CSDU.

OAG

Office of the Attorney General. Synonymous with AG.

Obligee

Person who is to receive child support.

Obligor

Person who is to pay child support.

PIN

Personal Identification Number. A numeric password assigned by the AG's office in conjunction with a CIN allowing a parent to login to the AG's payment record web site.

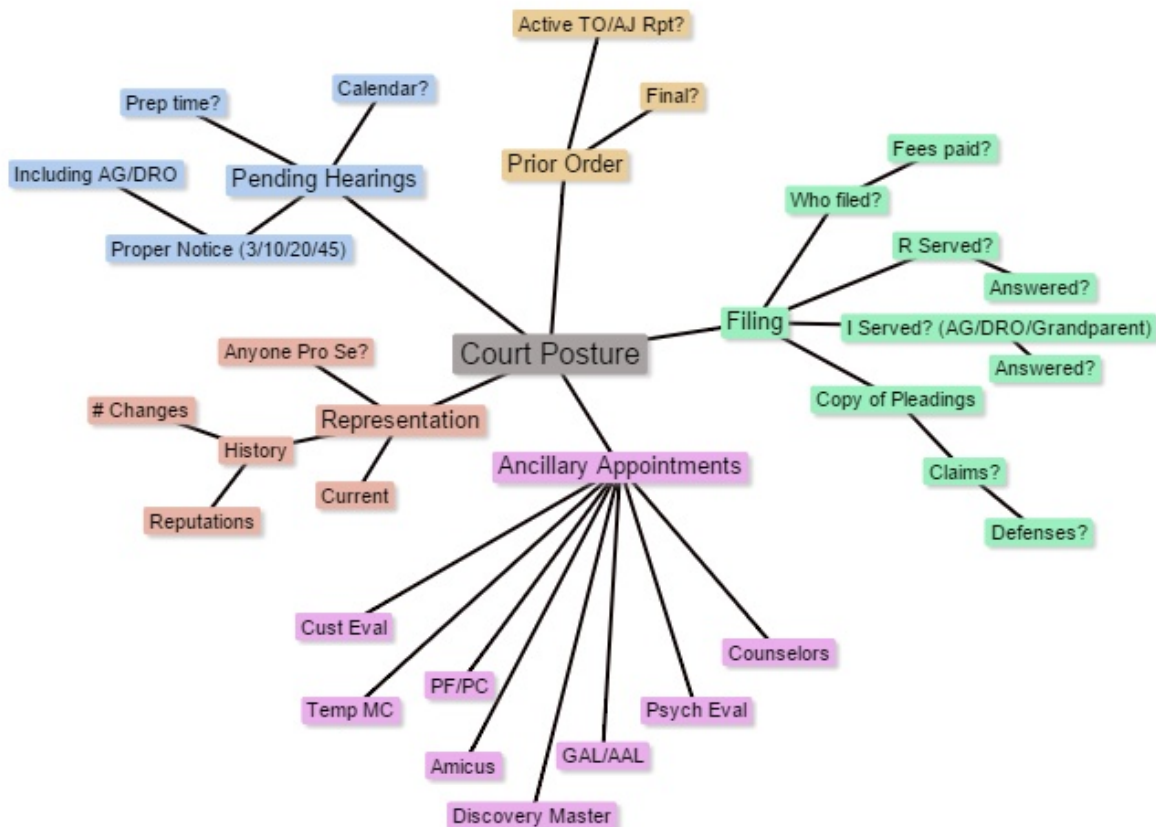
Pre-Consultation Research: Generally

This module explains the research you should do in every potential new case between the time of the PNC intake telephone call and the first meeting with an attorney in your office. Other modules will explain specific additional research that should be done in specific types of cases.

Pre-Consultation Research

People like to hire professionals who care about their cases and who are obviously prepared. Prior to the initial consultation, you will want to learn as much as you quickly can. You do not want to spend hours researching a case you may never get. At the same time, you have to invest more than zero prior to the consultation. The good news is that most of these questions can be answered through the District Clerk's web site in most populous counties.

Court Posture Mindmap



Mindmap illustration of topics to research prior to consultation meeting.

The Filing

You will want to know as much as you can about the status of any pleadings that have been filed.

- Get a copy of the pleadings and note what is being claimed and start thinking through possible defenses.
- Pay close attention to the status of service. Just because someone is in possession of pleadings does not mean that he or she has been properly served in compliance with the Texas Rules of Civil Procedure. If the respondent has been served, has he or she filed an answer? What is the answer date[\[footnote\]](#)?
See, Rules 15 and 99 of the Texas Rules of Civil Procedure
- You will also want to know if any intervenors or necessary parties have been brought into the litigation and served. For example, if the OAG has been involved in modifying or enforcing child support at any time in this case, then the OAG is a necessary party to any future proceedings involving child support and therefore must be served. In some districts, e.g. Dallas County, there is a Domestic Relations Office (**DRO**) that stands in the place of the the OAG in enforcement matters.
- You will also want to know who filed the lawsuit, if it has already been filed, and whether the filing fees have been paid.

Again, the District Clerk's registry of actions can answer most of these questions. If the District Clerk's office does not have an on-line registry of actions, then you will need to narrow your issues and call the District Clerk's office and ask one of the deputy clerks for information about the case.

Pending Hearings

It is critical that you know about any pending hearings. This is one question that you should answer before the consultation meeting. If you cannot find out whether there are any pending hearings from the District Clerk's web site, you must call the District Clerk to find out.

- Has proper notice of the hearing been given? In general you are entitled to 60 days' notice prior to a **DWOP** setting[\[footnote\]](#), 45 days' notice prior to the initial trial setting[\[footnote\]](#), 21 days' notice prior to a hearing or ruling on a motion for summary judgment[\[footnote\]](#), 10 days' notice prior to a hearing on a motion to enforce child support[\[footnote\]](#), and 3 days' notice prior to most other hearings[\[footnote\]](#).
Dismissal for want of prosecution is authorized by rule 165a of the Texas Rules of Civil Procedure. [***CITE FOR NOTICE***]
Rule 245 of the Texas Rules of Civil Procedure
Rule 166a(c) of the Texas Rules of Civil Procedure
Section 157.062(c) of the Texas Family Code
Rule 21(b) of the Texas Rules of Civil Procedure.
- If there are pending hearings, you need to determine whether you have enough time to prepare and whether your calendar will permit you to attend the hearing.
- Finally, if you can easily make the determination, try to see whether all other parties have been noticed on any pending hearing.

Do yourself and your PNC a favor and know of pending hearings and how you are going to address the hearing prior to the consultation meeting. Do NOT rely on the PNC for this information--get it directly from the District Clerk, whether through an official web site or a telephone call to the clerk assigned to the court.

Prior Orders

Having a copy of any prior final order and any temporary order or associate judge recommendation in the PNC's case, will help you prepare for the

consultation meeting. In some jurisdictions it is easy to get copies of orders. In others, you have to rely on the PNC to bring any live orders to the consultation meeting.

Representation

Pay attention to whether there are attorneys hired in the case and, if so, find out who they are. If you can access an on-line registry of actions, it is easy to discern some facts about how the case is being prosecuted and how it is likely to be resolved.

- Is any party currently self-represented (pro se)? If the opposing party is proceeding pro se, it may be because he or she does not have the financial resources to hire an attorney. It could also indicate that he or she believes him- or herself to be as qualified as a licensed attorney. Sometimes it means that the other side of the case is out for vengeance or to inflict pain on your prospective client, perhaps even entertaining fantasies about some showdown in the courtroom where he or she gets to grill your client and show the world the truth. Either way, having a self-represented opposing party is rarely good news. On the other hand, if the PNC is now pro se, it could mean that he or she has gotten in over his or her head, may have already missed some deadlines or ired the judge, and now expects you to come in and make it all right. If this is the case, be careful to set conservative expectations in the consultation meeting.
- How many times has either party switched attorneys? In counties that use the Odyssey system, it is easy to see the list of attorneys who have been on then off of the case. Other counties have different systems that require you to scroll through a registry of actions looking for motions for withdrawal of counsel. No matter how dry your stream of revenue and new clients may seem from time to time, it is almost never a good idea to be the third or later attorney on a case. If a client is firing that many attorneys or that many attorneys are quitting, there is either a problem with payment, extreme problems in managing the client, or both.

- Pay attention to who the other attorneys are or have been. If there is a really good attorney on the other side of the case, the case will be a pleasure to work no matter the legal outcome. If there is an attorney on the other side who would have difficulty finding friends outside of the courtroom, chances are that you are going to be in for a tough ride, no matter how simple the case should be. Finally, if you see that you are being hired after the client parted ways with a couple of other high-quality attorneys, you might ask yourself how this case will turn out better for you than it turned out for them.

Ancillary Appointments

The mindmap in Figure 1 provides a good list of possible ancillary appointments that might have already been made prior to you joining the case. Such appointments by themselves do not mean much. Lots of appointments could indicate you have a simple case with wealthy parties who like to hire an expert for every task. Few appointments could mean that you have a difficult case with a tangle of conflicting stories combined with litigants who either lack the imagination or perhaps the financial resources to hire ancillary appointees.

Exercises

Try to do as much work on these exercises as you can without resorting to Internet searches or consulting with others. The more you push yourself to think through these issues, the better you will be at spotting issues and formulating plans for dealing with them.

Exercise:

Problem:

For each area of research suggested above (Filings, Pending Hearings, Prior Orders, Representation, Ancillary Appointments), write down the name of the area of research and beneath it a list of questions you might ask the PNC to learn as much as you can about the posture of the case. Indicate which questions require that you call the District Clerk's office for verification.

Solution:

Here is an example for the topic of Representation.

- Are you currently represented by an attorney?
 - YES:
 - What is her or her name?
 - Who represented you before this attorney?
 - Why did you terminate the first attorney; why are you looking to replace your current attorney?
 - NO:
 - Have you ever been represented in this case? If so, why did you release your prior attorney?
 - Why have you decided to hire an attorney at this time?
- Is your opposing party represented by an attorney? If so, who?

Glossary**AAL**

Attorney Ad Litem. The AAL is appointed by the court to represent children or absent adults. The AAL owes the represented party the duties of undivided loyalty, confidentiality, and competent

representation. See sections 107.001(2), 107.003, 107.004, 107.0045, and 107.010 of the Texas Family Code.

AG

Attorney General. The AG is a necessary party in all cases involving child support where the State is providing services to the obligee or the children.

AJ

Associate Judge. Chapter 201 of the Texas Family Code authorizes the appointment of associate judges to hear any aspect of a suit over which the trial court has jurisdiction.

Amicus

An amicus attorney is appointed by the judge to assist the court in child custody matters. The amicus attorney does not represent the children or a party to the lawsuit. See sections 107.003, 107.005, and 107.021 of the Texas Family Code.

Cust Eval

A custody evaluation has replaced social studies as of the 2015 legislative session. See, H.B. 1449, 84th Legislature, Regular Session, for amendments affecting social studies authorized by subchapter D of Chapter 107 of the Texas Family Code.

DRO

Domestic Relations Office. Some populous counties, such as Dallas County, have a domestic relations office that stands in for the Office of the Attorney General in child support matters before the elected district judge.

DWOP

Dismissal for Want of Prosecution. If you don't pursue the case once it's filed, many courts will place the case on the DWOP docket. The court has the inherent power to manage its docket, *Villarreal v. San Antonio Truck & Equip.*, 994 S.W.2d 628, 630 (Tex. 1999), and DWOP is authorized by rule 165a of the Texas Rules of Civil Procedure.

GAL

Guardian Ad Litem. The GAL is appointed to represent the best interests of the child, not the child's wishes. Section 107.001(5) of the Texas Family Code. *See*, sections 107.002, 107.011, 107.0125, and 107.0161 of the Texas Family Code.

PC

Parenting Coordinator. A parenting coordinator has a confidential relationship with the parents and is appointed in high-conflict cases to assist in resolving parenting conflicts without the parents having to take every parenting dispute to court. *See* sections 153.601 - 153.611 of the Texas Family Code.

PF

Parenting Facilitator. A parenting facilitator does NOT have a confidential relationship with the parents and is appointed in high-conflict cases to assist in resolving parenting conflicts. Unlike a PC who has a confidential relationship with the parents, a PF can and often does testify in court. *See* sections 153.601 - 153.611 of the Texas Family Code.

Psych Eval

Psychological Evaluation. A psychological evaluation may be done by court order. The parents and/or the children may be evaluated.

Temp MC

Temporary Managing Conservator. The court can appoint a temporary managing conservator in CPS cases where the children have been removed from the home of the primary managing conservator. Normally the Department of Family and Protective Services is appointed in the temp MC role and the Department delegates that role out to either a foster parent or a relative of the child's.

TO

Temporary Orders. Section 105.001 of the Texas Family Code authorizes the court to make temporary orders for the safety and protection of the children if the children would otherwise be in danger. The Texas Legislature made it clear in 2015 that temporary orders are

to be reserved for cases where there is a clear risk of harm to the children unless temporary orders are put into place.[***CITE NEEDED***]